

Letter of Findings Number: 04-20110558
Sales and Use Tax
For the 2008-2010 Tax Years

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ISSUE

I. Sales and Use Tax—Imposition.

Authority: IC § 6-8.1-5-1; [45 IAC 2.2-3-27](#); [45 IAC 15-4-1](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of sales and use tax.

STATEMENT OF FACTS

Taxpayer operated a gas station and convenience store in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer for sales and use tax for the years 2008 through 2010 ("Tax Years"). The Department determined that Taxpayer's records were inadequate. Taxpayer did not have daily cash register Z-tapes, original sales records, expense reports, and monthly sales recaps. As a result of the Department's audit, the Department issued proposed assessments of sales and use tax for the Tax Years based on the best information available.

Taxpayer protested the imposition of sales and use tax. Taxpayer submitted a protest, asserting that Taxpayer had purchased several thousand dollars worth of merchandise that was exempt from sales tax. The Department granted taxpayer an administrative hearing. Taxpayer's representative submitted additional invoices purporting to represent that Taxpayer's purchases which would have then been sold exempt from sales tax during the Tax Years. The hearing officer prepared this Letter of Findings based upon the information contained within the Department's audit, and upon the information taxpayer subsequently presented.

I. Sales and Use Tax—Imposition.

DISCUSSION

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

During the audit, the Department requested original sales records, invoices, expense reports, and monthly sales recaps covering the Tax Years. Taxpayer did not provide records for any of those items. The audit progress report indicates that the Department made numerous requests for information, which Taxpayer ignored. Taxpayer also caused numerous delays by failing to keep scheduled appointments or follow up telephone calls with the auditor.

Without more complete or reliable original records, the auditor proceeded to develop the audit report based upon the "best information available." For non-metered pump sales, since the Department was not provided with daily cash register Z-tapes, daily sales reports, or monthly sales reports documenting non-metered sales, the Department disallowed all non-metered exempt sales. For metered gasoline pump and diesel fuel sales, a fuel accountability study was conducted using information the Department obtained from Taxpayer's fuel distributor, showing how much fuel was sold to Taxpayer. The gasoline and diesel fuel gallons reported on Taxpayer's ST-103MP return was subtracted from the amount of gasoline and diesel fuel gallons purchased from the supplier to arrive at the gallons of gasoline and diesel fuel which were unaccounted for. The reported sales were divided by the reported gallons, on the taxpayers ST-103MP returns, to arrive at a price per gallon. The unaccounted for gallons from the fuel accountability report were then multiplied by the price per gallon to arrive at the corresponding unaccounted for sales. Sales tax was then assessed on the unaccounted for sales of gasoline and diesel fuel.

For credit on the collection of prepaid sales tax, the amount of prepaid sales tax allowable to claim was determined by listing all monthly fuel purchases and the corresponding prepaid sales tax collected by the supplier. A fuel accountability study was also used to verify that all fuel was reported, which was discussed above. Adjustments were made by using the prepaid sales tax credit as the audited amount minus the reported amount on the taxpayer's ST-103MP returns. This actually resulted in a large credit for Taxpayer in 2009.

Taxpayer purchased tangible personal property during the Tax Years, but was unable to provide any check registers, purchase journals, or ledgers to document purchases, though numerous attempts were made, and additional time was provided. Taxpayer's income tax returns were requested from the IRS, which provided the returns for 2008 and 2009. Pursuant to [45 IAC 2.2-3-27](#), the taxpayer is responsible for retaining documentation to verify whether or not an item has previously been taxed. Without such documentation, all items listed on the 1120S income tax returns are considered taxable. No breakdown of other expenses was provided in the income

tax returns. The auditor found it reasonable that there are both taxable and non-taxable other expenses. The amount of other expenses subject to tax for the 2008 and 2009 time periods was estimated at 50 percent taxable and 50 percent non-taxable to accommodate the taxable and non-taxable other expenses documented in the 1120S income tax returns. The income tax return for 2010 was not provided by the IRS. The 2010 estimated other deductions were derived by averaging the 2008 and 2009 other deductions and multiplying by the percentage of months in operation during the tax year. The 2010 estimated other deductions were then multiplied by the 50 percent taxable amount to arrive at the 2010 total taxable estimated deductions.

The Department prepared the sales and use tax assessments based upon authority contained within IC § 6-8.1-5-1(b) which states that "[i]f the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available." See also [45 IAC 15-4-1](#) (permitting the Department access to private sources in performing the Department's functions).

After the hearing, Taxpayer's representative provided numerous invoices to the Department, the purpose of which was not explained. Apparently, this was to establish that Taxpayer purchased many items that, when sold, would have been exempt from sales tax when sold to Taxpayer's customers. However, if that is the case, the invoices are completely irrelevant. It is not at issue that Taxpayer did not collect sales tax from its customers on the purchases of consumable items in its convenience store. The Department's sales tax assessment was the result of Taxpayer's failure to report all of the sales of gasoline and diesel fuel, and collect and remit sales tax from its gasoline and diesel fuel that Taxpayer sold. Further, the Department's use tax assessment was due to Taxpayer not reporting use tax on items purchased as expenses for its operations.

Taxpayer has the obligation to prepare a careful, methodical, and detailed factual presentation of the evidence sufficient to refute the conclusions contained within the audit. Invoices, without more, do not speak for themselves, even if they were relevant to the matter at hand, which they are not.

Taxpayer's invoices proffered after the hearing do not sufficiently refute the information or the results reached in the Department's audit. Taxpayer failed to meet its burden of proof to establish that the findings of the audit were incorrect.

FINDING

Taxpayer's protest is respectfully denied.

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